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jurisprudence which Austin completely overlooked and consider his definition as one of the whole, not of the part—as of all law, rather than particular laws—and you have his theories in a shape which will enable the student to read other severe critics, viz., Sir Henry Maine and Clark, and yet continue to accept much of Austin's reasoning.

In his *Lectures on Jurisprudence*, Austin first defined law in its widest sense as "a rule laid down for the guidance of an intelligent being by an intelligent being having power over him;" positive laws are those which are "set by a sovereign person, or a sovereign body of persons, to a member, or members, of the independent political society wherein that person or body is sovereign or supreme." Positive laws are the command of the sovereign and Austin then proceeded to a discussion of the sovereign after his treatment of law—a method which, although criticised severally by Sir Henry Maine, is logically defensible.

Mr. Eastwood gives a tolerable complete outline of Austin's theory, but his criticism is conditioned by his own knowledge of political philosophy which does not appear to be extensive. His chief point is that sovereignty is divisible—a principle the contrary of which has been generally accepted since Bodin. Nor does Mr. Eastwood make clear the most important modifications which must be put on Austin's theories: (1) that constitutional law really is law because it controls the government, not the state (as Austin seemed to consider) and is just as much an expression of the will of the state as are the enactments of a law-making body, for the state is not limited to a legislature as a mouth-piece; and (2) that the jurist is concerned only with those persons or bodies which have the power to express the will of the state—that sovereignty resides in the totality of these volitional organs, be they parliaments, courts, or assemblies—and that the sociologist or practical politician can determine the powers or influences, such as electorates, behind these organs. In short, there is a legal sovereign, with which the jurist is concerned, and a political sovereign, with which he has no concern. Recognize these two limitations on Austin's theories, and you get rid of his apparent inconsistencies. These can not be explained by arguing the divisibility of sovereignty.

As this review has already indicated, Mr. Eastwood's work will be of great value to the student of jurisprudence; but to the student of politics its worth is questionable. A bibliography gives the most important books dealing with Austin's legal theories—the author has relied largely on Jethro Brown's *The Austinian Theory of Law*—but the list of writings on sovereignty is very inadequate. The little summary of Austin's theories as to law, however, if read by every intending student of jurisprudence, would make subsequent study easier and discount the criticisms which Mr. Eastwood plainly shows not to be valid.

LINDSAY ROGERS.

THE LAW AND PRACTICE OF MUNICIPAL HOME RULE, by Howard Lee McBain. (New York: Columbia University Press, 1916, pp. xviii, 724.)

In twelve states of the Union certain or all cities may frame and adopt their charters. Under these many difficult questions have arisen

as to whether state laws should supersede charter provisions and as to the powers of the municipalities over taxation, eminent domain, elections, matters of police, public utilities and claims against the city. The judicial decisions thus far rendered are already sufficient in number and importance to constitute a separate branch of state constitutional law, and it has been Professor McBain's purpose to codify these decisions and write a treatise which will be useful to the profession and to courts in states where home rule provisions prevail.

There are thus exhaustive chapters on the questions which have arisen under home rule charters in Missouri, California, Washington, Minnesota, Colorado, Oklahoma, Arizona, Oregon, Michigan, Ohio, Nebraska and Texas. More than five-sixths of the book is taken up with this enumeration and comment on the decisions, more space being devoted to Missouri and Oklahoma than to the other ten states because the system has been in operation longer—in Missouri since 1875 and in California since 1879.

But this is not the primary object of the volume. "The effort has been made," says Professor McBain, "to study the cases not only for the legal principles declared but also in the light of the practices both of cities in the making of charters and of legislatures in the enactment of laws. This, then, is the primary object of this work—to wit, that the specific questions that have arisen may be marshaled into review; that the difficulties, real and otherwise, which the courts have encountered in construing home rule provisions of constitutions may be understood and appreciated; and that the actual relation in law between the city as an autonomous unit and the state government as its restricted superior may be comprehended to the extent at least to which it has been settled by judicial decree and by charter and statutory practices." A concluding chapter summarizes the principles running through the decisions, and answers many questions which are puzzling to the framer of charters and the legislator who passes laws dealing with municipal powers.

The first three chapters of the book consider the origin and development of the home rule problem with particular reference to legislative power over cities and constitutional protection against specific abuses and against special legislation. The statement is concise and accurate; but the ground has been covered before, notably by Goodnow's *Municipal Home Rule*, which, while out of date, is still useful. Taken as a whole, Professor McBain has done a solid piece of work which will serve admirably the practitioner and the municipal scientist.

THE LAW OF PUBLIC SCHOOLS, by Harvey Cortlandt Voorhees. (Boston: Little, Brown & Co., 1916, pp. lvii, 429.)

The author, because of the great and growing importance of the public school system in our national existence, has selected a subject a treatise of which should prove of widespread interest not only to the legal profession but to the public at large. As he points out, the state of tomorrow is dependent to a large extent upon the public school